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CALIFORNIA FRANCHISE TAX BOARD

Tax News

FTB Offers Credit Card Option

In January the Franchise Tax Board launched a pilot program that allows some taxpayers to use their credit cards to pay their tax liabilities.

During the six-month pilot, certain qualified taxpayers will receive an insert along with their tax bill explaining how they can use their Discover/NOVUS, MasterCard or American Express credit card to pay their past due state tax bill. Estimate payments and payments made with a tax return are not yet part of FTB's credit card program.

The current program allows taxpayers to use their credit cards to pay all or part of their bill. Taxpayers may also use more than one credit card to pay their liability.

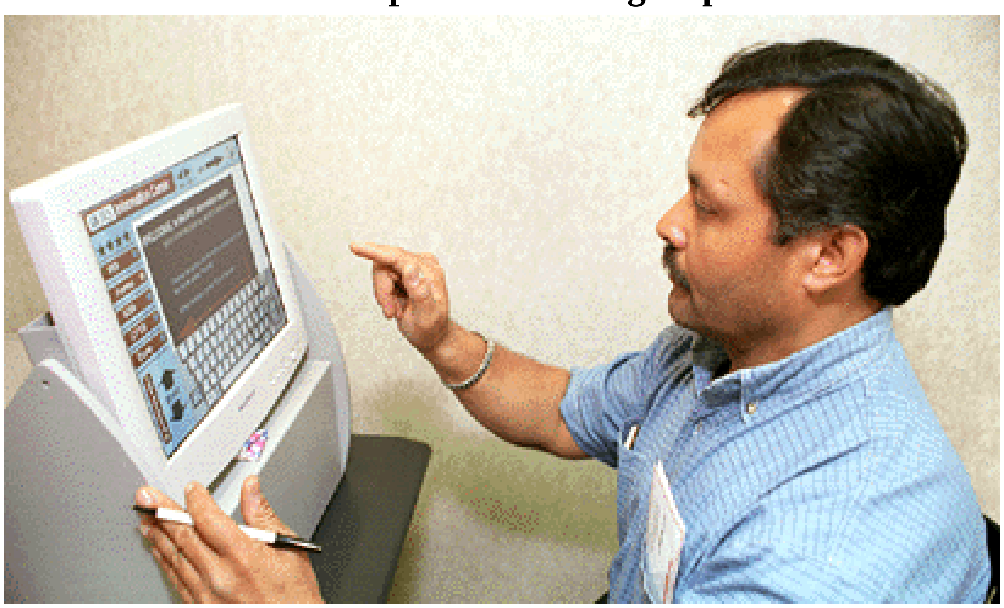
With credit card payments, the date the taxpayer completes the credit card transaction is the effective date of the payment. That means that the interest charges stop on that date, although FTB may not actually post the payment to the taxpayer's account until three to five days after the transaction.

To make a credit card payment, the taxpayer calls the toll-free number provided in the FTB insert and accesses an interactive voice response (IVR) system operated by an FTB-approved credit card payment-processing vendor. Once the IVR has all the required information, it gives the taxpayer a confirmation number. That number serves as the taxpayer's receipt.

The payment will show up later on the taxpayer's credit card statement as a payment to FTB.

Taxpayers will be charged a convenience fee by the vendor for use of the automated credit card service. For more information about the fee see: "Credit Cards: Frequently Asked Questions," on page 3.

Tax Help: At Your Fingertips



A customer uses a kiosk to download tax forms at a prototype tax store in the Great Mall of the Bay Area. FTB is also participating in the new tax store. Please see the article on page 2 entitled "Service on the Rise During Filing Season." FTB photo by Dan Chan

Inside ...

Tax News

Volume 99-2 March 1999

TAX NEWS is a bimonthly publication of the Communications Services Bureau, California Franchise Tax Board. Its primary objective is to provide information to income tax professionals about state income tax laws, regulations, policies and procedures.

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www.ftb.ca.gov

For information about a client's account, contact:
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(916) 845-7057 (phone)
(916) 845-6377 (fax)

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www.ftb.ca.gov

New Members Join Tax Board

The California Franchise Tax Board has two new members.

Johan Klehs, the newly elected chair of the State Board of Equalization, and B. Timothy Gage, the newly appointed director of the Department of Finance, now serve on the three-member Franchise Tax Board.

Klehs was first elected to the State Board of Equalization in November 1994 and was re-elected in 1998. He served as the chair of the State Board of Equalization in 1995 and 1996 and therefore also served as a member of the Franchise Tax Board in those years.

Before his election to the State Board of Equalization, Klehs served in the California Assembly for 12 years.

Gage, who was appointed director of the Department of Finance in December by Governor Gray Davis, has held several finance positions in state government, most recently four years as chief fiscal advisor to the Senate President Pro Tempore.

He also worked for seven years as the chief consultant to the Assembly Ways and Means Committee and six years as assistant fiscal advisor to the Senate President Pro Tempore.

Klehs and Gage join Kathleen Connell, who was re-elected State Controller in 1998. Connell is the chair of the Franchise Tax Board.

Service on the Rise During Filing Season

Trinh Vo, facility manager of the tax store, prepares a sign for the front window. FTB photo by Dan Chan

Increased hours of operation and telephone system upgrades have made it easier to get assistance from the Franchise Tax Board during the 1999 peak filing season.

Tax Practitioner Assistance

The Tax Practitioner Support Unit is available Monday through Friday, 7 a.m. to 8 p.m., and on the last four Saturdays before April 15 (March 20 and 27 and April 3 and 10), from 8 a.m. until 5 p.m.

There are several ways to reach the Tax Practitioner Support Unit. If you have questions about account resolution problems or questions about tax law, call (916) 845-7057 or send a fax with your question to (916) 845-6377.

If you have questions concerning the collection of personal income taxes, send a fax with your question to (916) 845-0494.

Typically, the Tax Practitioner Support Unit responds to questions received by fax within three working days. The maximum wait for a response by fax is seven working days.

Remember, the FTB Tax Practitioner Support Unit provides on-line and written assistance solely to qualified tax practitioners, attorneys, enrolled agents and certified public accountants.

Taxpayer Assistance

FTB has also made it easier for taxpayers to get assistance during the 1999 filing season. From January 4 through April 15, the FTB general toll-free telephone service is available Monday through Friday, 6 a.m. until midnight; Saturday and holidays, 8 a.m. until 5 p.m.

From within the United States, the

Continued on Page 12

Here are the answers to frequently asked questions about FTB's credit card program for personal income tax liabilities:

Why should I use my credit card to pay my tax liability?

Payment by credit card is another payment option. Taxpayers can still make payment by check, money order, cash or Western Union money transfer. Taxpayers who are unable to pay the total amount owed may also request a payment arrangement. However, with partial payments, the interest and/or penalties will continue to accrue on any unpaid balances.

Which credit cards will FTB accept?

Taxpayers can use their Discover/ NOVUS, MasterCard and/or American Express cards.

Is FTB accepting credit cards for all types of taxes?

No. The pilot program is limited to individual taxpayers who have a past due state tax liability. FTB plans to expand the program to other types of tax payments in the future.

Will FTB have access to taxpayers' credit card information?

No. FTB's credit card processing vendor will not disclose taxpayers' credit card numbers to FTB at any time during the process.

How much is the convenience fee?

The convenience fee amount varies according to the payment amount. For example, the credit card processing vendor will charge taxpayers a convenience fee of $19 for a $740 payment. For payments of $5,000 or more, eligible taxpayers can contact the credit card processing vendor to find out exactly how much the vendor will charge them to make the payment. (For more information about the convenience fee, see the related article on this page entitled "Convenience Fee Chart.")

Are there any other fees such as a cash advance fee that taxpayers could be charged for making a tax payment using a credit card?

Discover/NOVUS and American Express will not charge a cash advance fee for the tax payment transaction. Some banks that issue MasterCard credit cards may charge a cash advance fee for tax payments. Cardholders should check with the financial institution that issued the credit card to see if there is a cash advance fee. The credit card payment processor's IVR system also has been programmed to notify cardholders if their bank charges a cash advance fee for the FTB payment. Cardholders then have the option of continuing the transaction, using another credit card or ending the call.

Can taxpayers make partial payments with their credit card?

Yes. Taxpayers may pay all or part of the balance due by credit card; however, interest and/or penalties will continue to accrue on any unpaid past due balances.

Can parents or friends use their own credit card to pay balance due taxes for another person?

Yes. The credit card program allows relatives or friends to pay the tax bill for the taxpayer in certain situations, as long as they have the appropriate taxpayer information when they make the payment.

What should taxpayers do if they have a problem with their credit card payment?

If taxpayers have questions or problems concerning billing errors, fees or interest charged, they should first contact the bank that issued the credit card. If they have questions or a dispute concerning the amount of the tax owed or any other matter concerning their tax return, they should call FTB's general toll-free telephone service at (800) 852-5711.

Convenience Fee Chart

Taxpayers will be charged a convenience fee by the vendor for use of the automated credit card service.

The convenience fee amount varies according to the payment amount. The chart below shows what a taxpayer can expect to pay for payment amounts up to $4,999.99. For payments of $5,000 or more, eligible taxpayers can contact the credit card processing vendor at to find out exactly how much the vendor will charge them to make the payment.

Fee Chart

Amount Charged	**Fee**
$ 1-99.99	$ 3
$ 100-199.99	$ 6
$ 200-399.99	$ 11
$ 400-699.99	$ 16
$ 700-799.99	$ 19
$ 800-1099.99	$ 25
$ 1100-1599.99	$ 35
$ 1600-2299.99	$ 49
$ 2300-3099.99	$ 68
$ 3100-3999.99	$ 87
$ 4000-4999.99	$ 109

$5000 and up, contact the credit card processing vendor.

Court Opinions

On January 26, 1999, the Third Appellate District (Sacramento) California Court of Appeal decided William Schatz, et. al. v. Franchise Tax Board.

In a published opinion, the court held that a California assessment of additional tax did not become final (and so was not discharged in bankruptcy) until amended returns self-assessing additional tax based on the federal determination were accepted and posted by FTB.

The court rejected the taxpayer's argument that a self-assessed amended return created an immediate due and payable liability. The court explained that "assessment" for bankruptcy discharge purposes does not occur until FTB formally and finally fixes the amount payable by accepting the computation shown on the amended returns and posting the additional tax on its records.

See "240-Day Rule" found in "The Question Column" on this page.

The Question Column

Power of Attorney

Will FTB accept an Internal Revenue Service IRS Form 2848, "Power of Attorney?"

Yes, provided the power of attorney includes language that states it also applies to the taxpayer's state income tax matters.

Will powers of attorney ever be centralized at the Franchise Tax Board like at the IRS?

Yes. FTB is currently developing a system that will allow it to store power of attorney information in a central location and allow employees to access that information from anywhere in the department.

Does FTB accept powers of attorney sent by fax?

Yes. FTB accepts powers of attorney forms sent by fax. However, if it appears that the form has been forged or is invalid, an original will be required.

240-Day Rule

What is FTB's position on the 240-day rule in the following situation?

(1) The taxpayer files an original return;

(2) Then the IRS issues a notice of deficiency;

(3) Then the taxpayer fails to file an FTB Form 540X, "Amended Individual Income Tax Return;"

(4) As a result, FTB makes an assessment;

(5) After 240 days pass, the taxpayer files for Chapter 7 bankruptcy.

FTB's position is that if the debtor fails to report the information and FTB receives it under the exchange of information agreement with the IRS (Internal Revenue Code 6103(d)), the additional assessment is not dischargeable under section 523(a)(1)(B)(i), 11 U.S.C.

This situation is equivalent to the person not filing a return for the additional assessment.

The court in: Blutter (177 br. 209; 1995 br. Lexis 139) bridged the gap between the reporting requirements of the Revenue and Taxation Code (RTC) Section 18622 and the filing requirements of Section 523(a)(1)(B)(i),11 U.S.C.

In cases involving Chapters 7, 11 and 12 bankruptcies, when the IRS produces a final federal determination, it creates a new filing requirement with FTB. The due date for taxpayers to report any changes to their federal return is six months after the IRS' final determination. The additional assessment must *not* fall under the "Exceptions to Discharge" Section 523, 11 U.S.C.

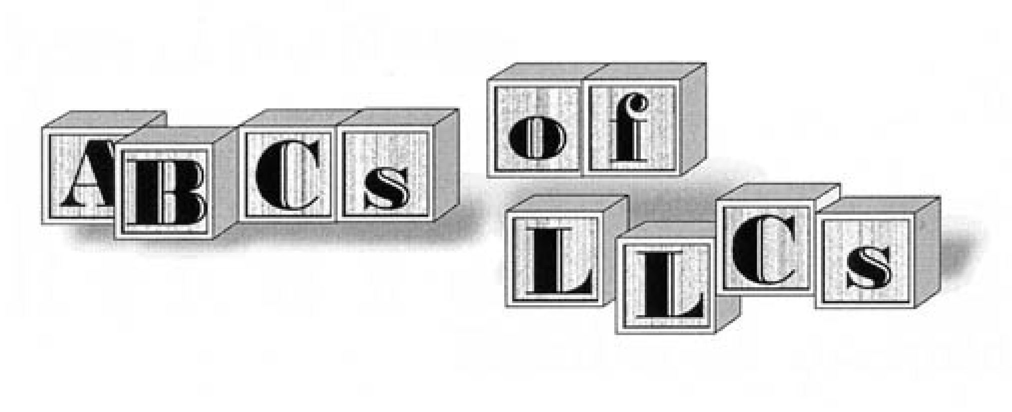
In other words, the additional assessment has a new *three-year rule* and *240-day rule* under Section 523 (a)(1)(A), 11 U.S.C. and a new two-year rule in Section 523 (a)(1)(B), 11 U.S.C.

For the additional assessment to be dischargeable, the debtor must volunteer the information as specified in RTC Section 18622. If the debtor provides the final determination or amended return after the time specified in RTC Section 18622, it would be treated as a delinquent return for bankruptcy purposes. In this situation the delinquent return would have to be filed more then two years before the petition date as required in Section 523(a)(1)(B)(ii), 11 U.S.C.

If the debtor does not volunteer the additional assessment based on IRS information, it is not dischargeable. However, FTB is not actively collecting on these liabilities until there is a binding decision in the 9th circuit on this issue. It may take another two years to have this issue fully resolved.

What is the current status of the "Blutter" issue?

The "Blutter" issue is working its way to conclusion. The department has one case pending in the Ninth Circuit Court of Appeals. Oral argument was held December 11, 1998 and the department is expecting a decision by mid-year.



Limited Liability Co: Anything But Simple

For many years there were three basic types of business entities: (1) sole proprietorships, (2) partnerships and (3) corporations.

In recent years, a new legal structure has been created — limited liability companies (LLCs).

Generally, California tax law mirrors federal tax law. However, major differences exist in the treatment of the conversion of a partnership into an LLC not classified as a corporation.

Federal tax law treats general partnerships, limited partnerships, limited liability partnerships and limited liability companies treated as partnerships in the same manner. Consequently, they all file Form 1065, "U.S. Partnership Return of Income."

An LLC not classified as a corporation for California tax purposes is subject to additional requirements. This creates a requirement for the converting business entity to file two short period returns.

The specific requirements of an LLC are explained in Form 568, "Limited Liability Company Tax Booklet."

In summary, three steps need to be taken by business entities converting from a partnership into an LLC:

1 File form FTB 3522, "Limited Liability Company Tax Voucher," and pay the annual tax on or before the 15th day of the fourth month after the beginning of the LLC's short taxable year.

2 File Form 565, "Partnership Return of Income," on or before the 15th day of the fourth month after the end of the partnership's short tax year.

Note: Limited partnerships must file Secretary of State Form LP-4/7, "Certificate of Cancellation," or Form LP-9, "Certificate of Merger," to end their filing and annual tax requirements. An automatic six-month extension is available for filing the return, however; if an annual tax is due, file form FTB 3538, "Payment Voucher for Automatic Extension for Limited Partnerships, LLPs, and REMICS," with payment, by the regular due date of the short period return.

3 File Form 568, "Limited Liability Company Return of Income," on or before the 15th day of the fourth month after the end of the LLC's short taxable year. An automatic six-month extension is available for filing the return. However; if an LLC annual fee or nonconsenting nonresident members' tax is due, file form FTB 3537, "Payment Voucher for Automatic Extension for Limited Liability Companies," with payment, by the regular due date of the short period return. The LLC annual fee for the current taxable year is also due on or before the 15th day of the fourth month after the beginning of the LLC's taxable year.

For more information about California's filing requirements for LLCs, contact the Tax Practitioner Support Unit at (916) 845-7057. To download, view or print Form 568, visit the FTB Web site at www.ftb.ca.gov and go to the Tax Forms page.

FTB Calendar

March

- Requests for Tax Return are mailed to individuals who have not filed their 1997 personal income tax return.
- Notices of Proposed Assessment are mailed to individuals who have not filed their 1997 tax returns.

20 Previous month nonresident withholding payments are due if total withholding exceeded $2,500.

April

- Requests for Tax Return are mailed to individuals who have not filed their 1997 personal income tax return.
- Notices of Proposed Assessment are mailed to individuals who have not filed their 1997 tax returns.

15 1998 personal income tax returns are due.

15 First quarter 1999 personal income tax estimate payments are due.

20 See March 20.

May

- Requests for Tax Return are mailed to individuals who have not filed their 1997 personal income tax return.
- Notices of Proposed Assessment are mailed to individuals who have not filed their 1997 tax returns.

20 See March 20.

CONTINUED ON PAGE 7

FTB e-filers: Keep Signature Documents

Most tax practitioners who e-file already know that both the Internal Revenue Service and the Franchise Tax Board require a signature document for each return filed. Fewer know the proper way to process them.

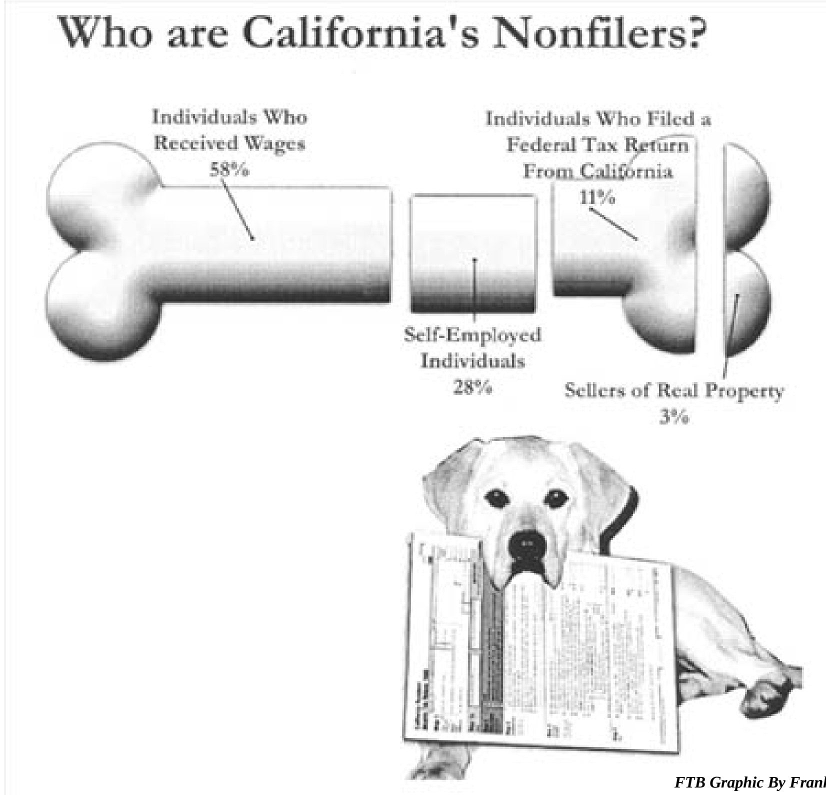
The confusion lies in what to do after the taxpayer and the electronic return originator (ERO) complete the form.

FTB asks that EROs do not mail form FTB 8453, "California Individual Income Tax Declaration for e-file" to FTB. EROs are to retain the original signed form FTB 8453 in their files for four years. In addition, FTB instructs EROs not to mail a copy of FTB's form FTB 8453 to the IRS.

The IRS, however, does require EROs to mail the IRS original signed federal Form 8453 to the appropriate IRS service center.

The FTB e-file process is truly paperless. "If we need a copy of any signature documents, we will contact the ERO," said Alison Adams, lead analyst in FTB's Electronic Document Services Unit. "If an ERO inadvertently mails any signature documents to FTB, we mail them back to the ERO," she added.

For more information about the e-file program, contact the FTB e-file Help Desk at (916) 845-0353. Help Desk hours are 8 a.m. until 5 p.m., Monday through Friday.



FTB Graphic By Frank Soto

What's Your Excuse?

Better to File Late Than Not at All

"My dog ate my tax return."

"I was going to file but my accountant was abducted by aliens." "My husband used our tax return to wrap the fish he caught."

These are just about the only excuses the Franchise Tax Board hasn't heard yet for why people didn't file their 1997 tax returns on time.

Reasons for not filing have ranged from "accidentally tucking it away in a neglected corner" to having them "eaten" by a personal computer."

The good news is, regardless of the reason people haven't filed their 1997 return yet (even though the 1998 due date is almost here), they can still file.

The Franchise Tax Board is currently in the process of reminding nearly 700,000 of those individuals of their need to file. If the required returns aren't filed, FTB will likely follow up with proposed assessments based on the information that is available to the department.

The key is to file the return. Even if your client receives a notice of proposed assessment for not filing, the proposed figures will be adjusted based on the validated figures when a return is filed.

Also, by filing before they are contacted (or within 30 days of a request for tax return), they can avoid being charged additional penalties, interest and fees over and above what they would already owe.

Check SSNs on Mortgage Statements

You may have clients who received a notice requesting that they file a 1997 tax return because they 1) paid over $10,000 in mortgage interest during 1997, and 2) had not yet filed a return.

If they received the notice, they were among the nearly 25,000 people who were contacted recently as part of a new FTB nonfiler program. The request for return notices were issued to individuals who had not filed tax returns, although information reported to FTB indicated that they may have had enough income to require that one be filed.

These individuals should file the required returns as soon as possible to keep at a minimum the additional penalties, interest and fees associated with the nonfiling.

Some individuals, however, are receiving these notices because their mortgage lenders are reporting the wrong social security numbers on the Form 1098, "Mortgage Interest Statement."

Practitioners should verify that their clients' social security numbers are correctly reflected on all their tax documents, including Forms 1098, Form W-2, Forms 1099 " and Schedule K-1s. Problems also arise when a Form 1098 is reported under the social security number of a deceased spouse or an ex-spouse who no longer pays the mortgage on the property.

If you find that your client's social security number has been reported incorrectly, contact the reporting organization to have it corrected.

Voluntary Disclosure Program Helps Nonfilers

The Franchise Tax Board's Voluntary Disclosure Program allows a qualified business entity or shareholder to voluntarily file up to six past due tax returns and pay all outstanding tax liabilities.

As part of the voluntary agreement, FTB may waive penalties associated with the return filings.

A qualified business entity is one that is not registered with the California Office of the Secretary of State, has never filed a return with FTB and has not been the subject of an inquiry by FTB with respect to liability for any taxes.

A qualified shareholder is an individual who is a nonresident on the signing date of the voluntary disclosure agreement and is a shareholder in an S corporation that has applied for a voluntary disclosure agreement.

Representatives for qualified business entities and shareholders who want to apply for a voluntary disclosure agreement can call (800) 852-5711 to request form FTB 4925, "Application for Voluntary Disclosure." Qualified business entities or shareholders are not required to identify themselves when they call.

Questions about the program can be directed to the Corporation Filing Enforcement Unit at (916) 845-3294 or (916) 845-3795.

Not Everyone Has to File

Beginning January 1, 1996, corporations not incorporated under the laws of California may be excluded from California filing requirements if they are engaged solely in convention and trade show activities.

For the corporation to be excluded from a filing requirement and not be subject to the minimum franchise tax, the corporation must be engaged in such activities for seven or fewer days during the income year and earn gross income from such activities of $10,000 or less.

This tax provision does not apply to corporations qualified to do business in California through the California Office of the Secretary of State. Qualified corporations must still report California gross income and pay the corporate tax.

Wanted: New FTB e-filers

More and more practitioners are joining the FTB e-file program. By the close of the 1998 filing season, FTB had accepted 5,618 tax practitioners into its e-file program.

At press time, that number had grown to 7,157, an increase of 27 percent over last year.

To join the FTB e-file program, access form FTB 8633, "California Application to Participate in the e-file Program." from the FTB Web site at www.ftb.ca.gov/forms.

Download the form, complete it and send it by fax to FTB at (916) 845-0287.

For more information, call the FTB e-file Help Desk at (916) 845-0353. Help Desk hours are Monday through Friday, 8 a.m. until 5 p.m.

FTB Calendar

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June

- Requests for Tax Return are mailed to individuals who have not filed their 1997 personal income tax return.
- Notices of Proposed Assessment are mailed to individuals who have not filed their 1997 tax returns.
- Requests for Tax Return are mailed to corporations who have not filed their 1997 corporate tax return.

15 Second quarter 1999 personal income tax estimate payments are due.

20 See March 20.

Manufacturers' Investment Credit: For Your Information

Information that will help your clients better understand the manufacturers' investment credit (see article on this page) is available from the Franchise Tax Board.

FTB 1113, "Frequently Asked Questions About the Manufacturers' Investment Credit (MIC)," provides answers to 19 questions about the credit. The questions include, "How is the MIC claimed?" and "Do leases qualify for the MIC?" For a copy, visit FTB at its www.ftb.ca.gov Web site. Click on "Tax Forms" and scroll to "Miscellaneous California Income Tax Forms, Instructions and Publications." Or write:

Tax Forms Request Unit
Franchise Tax Board
PO Box 307,
Rancho Cordova, CA
95741-0307.
Or you may call
(800) 852-5711.

You also can obtain form FTB 3535, "Manufacturers' Investment Credit," from the same FTB sources. The form includes instructions that feature the Standard Industrial Classification (SIC) Manual's Division D listings.

Also, see MIC regulations at Title 18, California Code of Regulations, Sections 17053.49-0 through 17053.49-11 and 23649.0 through 23649.11.

Manufacturers' Investment Credit:

Avoid Common Errors Found With MIC

In the July 1998 issue of Tax News, "qualified taxpayer," "qualified property" and "qualified costs," the three key requirements for claiming the Manufacturers' Investment Credit (MIC), were discussed. The following is an overview of common errors found with these requirements.

Qualified Taxpayer

Generally, the taxpayer's business activity must be in manufacturing as described by codes 2011 through 3999 in the Standard Industrial Classification (SIC) Manual, 1987 edition. Codes 2011 through 3999 are under Division D, manufacturing, of the SIC Manual.

One common error found involves taxpayers that have business activities in other divisions of the SIC Manual. Some of these taxpayers erroneously claim the credit. For example, taxpayers who are engaged in the retail sale of bakery goods are claiming a MIC for costs paid for qualified property. However, these taxpayers would generally be classified in SIC Code 5461, "Retail Bakeries." Since these taxpayers are not engaged in an activity described under Division D, manufacturing, the taxpayers are not considered qualified taxpayers for purposes of claiming the MIC.

Qualified Property

Qualified property can either be new or used tangible personal property that is used in a qualified activity such as manufacturing. Tangible personal property means any tangible property except land and improvements. Some taxpayers have erroneously included real property (buildings, foundations, docks, etc.) and intangible assets such as patents, copyrights and purchased technology when listing qualified property.

One exception to the general tangible personal property requirement is for "special purpose buildings and foundations" owned by taxpayers engaged in specified SIC codes. Generally, this exception applies to "clean rooms" used by computer chip manufacturers, biotech firms and biopharmaceuticals. Nonqualified taxpayers, however, have erroneously included costs for parking lots, landscape, fencing and buildings.

Qualified Cost

This is an area where errors are frequently made. For example, some taxpayers erroneously include sales or use tax amounts paid to other states. Some taxpayers also erroneously include as qualified costs those amounts upon which no sales or use tax were paid or incurred.

Generally, there are two basic requirements for costs to be qualified for the MIC. First, California sales or use tax must be paid, directly or indirectly, on all costs, with the major exception of capitalized labor costs.

The MIC law states that qualified costs are an amount upon which California sales or use tax is paid, either directly or indirectly. For example, if you pay $100 for a machine, plus $8 in California sales tax, for a total cost of $108, then the qualified cost for the MIC is $100, not $108. Thus, the qualified costs for the MIC can never include sales or use tax amounts paid. If, however, you did not pay the $8 in California sales tax, the $100 paid for the machine would not be treated as a qualified cost.

Another common error found with qualified costs is the inclusion of costs that are currently expensed under Internal Revenue Code (IRC) Section 179. The second requirement for qualified costs is that amounts must be properly chargeable to your capital account.

In order to meet this requirement, costs must be properly includable in the tax basis for computing depreciation. Costs that are not included in the depreciable basis for tax purposes, such as amounts currently expensed under IRC Section 179 and similar provisions (such as the Los Angeles Revitalization Zone business expense deduction) are not eligible for the MIC. For example, if you purchased 10 stainless steel racks for $100 and elected to expense the item for California franchise tax purposes, the $100 paid

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Tax Form Corrections Announced

Tax practitioners should note the following corrections to the 1998 tax form information that has already been distributed:

Instructions for Schedule CA (540 and 540NR), page 6, column 2, line 38.

Add the following new paragraph:

Casualty and Theft Losses for Income-producing Property - You may need to make an adjustment for this deduction since California and federal law are not the same. California law does not conform to the federal provision that allows taking the full deduction for the loss rather than a miscellaneous itemized deduction subject to 2% of AGI. If you included a casualty or theft loss from income-producing property on federal Schedule A, line 27 and Schedule A, line 26 is:

- More than zero — no adjustment is necessary.
- Zero — make the following adjustment:

  1. Enter the total of the amounts on your federal Schedule A, line 26 and line 27______
  2. Reduce Schedule A, line 27 by the amount of the casualty and theft loss deduction and enter here _____
  3. Recalculate Schedule A, line 20 through line 26 including the casualty and theft loss deduction and enter here ____
  4. Add line 2 and line 3 ____
  5. Subtract line 5 from line 1 and include it as a negative number on line 38.

Instructions for Form 5805, "Underpayment of Estimated Tax by Individuals and Fiduciaries," page 2, column 3, line 10:

Delete the second bullet reading "IRC Section 644, tax on trusts."

Form 5805F, "Underpayment of Estimated Tax by Farmers and Fishermen."

First line directly below title:

Insert "or Form 541" after "Form 540NR."

Manufacturers' Investment Credit: Avoid Errors

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would not be treated as a qualified cost since the amount is not properly chargeable to your capital account.

Capitalized labor costs for constructing or modifying qualified property can also qualify for the MIC as long as they are treated as "direct" costs under IRC Section 263A. Direct costs include basic compensation, overtime pay, payroll taxes, holiday pay, sick pay, etc.

Some taxpayers, however, erroneously include "indirect" costs such as training costs, officer's compensation, insurance, travel and entertainment expenses, utilities, and freight charges.

Recapture

Regarding recapture: if within one year of the date the qualified property is placed in service, such property is (1) removed from California, or (2) primarily used in a non-qualified activity, or (3) transferred to an unrelated party, then the entire credit for such item of property must be recaptured by adding the amount of credit claimed to the "tax" of the qualified taxpayer for the following taxable or income year.

Recordkeeping

What records do you want to keep?

Generally, invoices, contracts, books and records should be maintained and will be adequate for purposes of substantiating the MIC. However, sales tax payment, where required, must be evident (usually shown on invoices and contracts). Books and records should be kept as long as the statute of limitations, generally four years from the original due date or the date the return was filed, remains open.

Free Seminars For Businesses, Taxpayers

"Taxpayer Service Days" and "Small Business Fairs" are free, educational conferences featuring representatives from the State Board of Equalization, Franchise Tax Board, Internal Revenue Service, Employment Development Department, County Assessor's Office and several other local, state, and federal agencies.

The following seminars have been scheduled:

Friday, March 12, in Long Beach at the Long Beach Convention Center.
(310) 516-4330

Thursday, March 18, in Stockton at the University of Pacific.
(209) 932-2338

Tuesday, March 23, in Inland Empire at California State University, San Bernardino.
(909) 680-6705

Wednesday, March 24, in Chico at California State University, Chico.
(916) 227-1883

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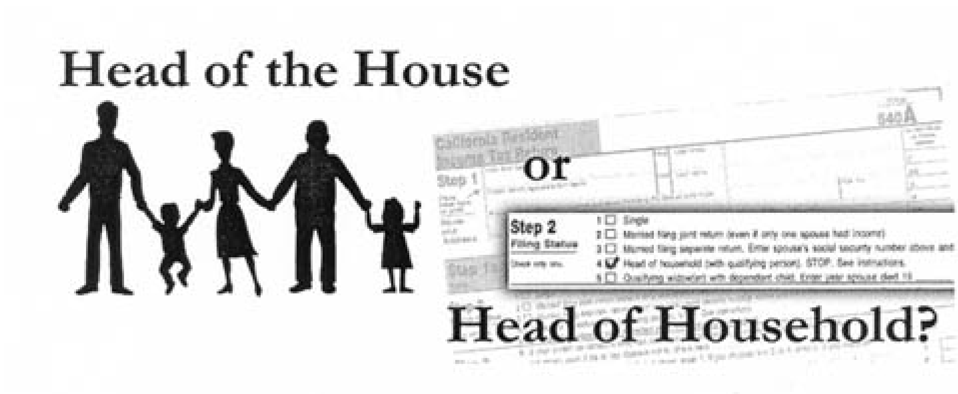
FTB Offers e-pay Option

The Franchise Tax Board is offering an electronic payment (e-pay) option to taxpayers who file electronic returns with balances due.

With the new option, an e-filer with a balance due may authorize FTB to debit his or her bank account on a specified date for the amount due. Now, not only can your clients e-file, but e-pay also, eliminating the need to mail a check and form FTB 3582, "Payment Voucher for Electronically Transmitted Returns," by April 15.



On December 9, 1998, eighty-five tax practitioners and taxpayers came to the Franchise Tax Board to participate in a symposium on the head of household filing status.

The symposium provided an opportunity for participants to learn more about head of household filing status requirements and to discuss their comments and questions about the filing status with a panel of experts from FTB and the Internal Revenue Service.

Representatives from FTB also demonstrated FTB's new computer-based FTB Publication 1540, "California Head of Household Filing Status Information," on CD-ROM.

Listed below are some of the questions and answers discussed at the symposium:

How can a parent prove that his or her home was his or her child's main home for more than one half the year?

A parent could submit evidence to FTB. FTB will consider any and all evidence. Such evidence could include a notarized statement signed under penalty of perjury from the other parent, a copy of the joint custody agreement, records kept by the parent or a calendar reflecting the time the child lived with the parent.

Can parents take turns claiming the head of household filing status every other year?

Yes. The parent claiming the filing status must have met all of the head of household requirements, including the requirement that the parent's home was the child's main home for more than half the year.

If a taxpayer's alien spouse lives with him or her all year, can the taxpayer qualify for the head of household filing status? (The taxpayer could not file a joint return because the spouse is undocumented and does not have a valid social security number.)

No. To qualify for the head of household filing status, the taxpayer must be unmarried at the end of the year or meet the requirements for being considered unmarried at the end of the year. For this taxpayer to be considered unmarried, the taxpayer would have to have met all the following requirements:

- Taxpayer filed a separate return from his or her spouse.
- Taxpayer paid more than half the cost of keeping up his or her home for the year.
- Taxpayer's spouse did not live in the taxpayer's home at any time during the last six months of the year.
- For more than half the year, the taxpayer's home was the main home of his or her child, stepchild or adopted child or, for the entire year the taxpayer's home was the main home of his or her foster child.
- Taxpayer was entitled to claim his or her child, stepchild, adopted child or foster child as his or her dependent.

Because the taxpayer's spouse lived in the taxpayer's home during the last six months of the year, the taxpayer cannot be considered unmarried, and thus cannot qualify for head of household filing status.

If the taxpayer's spouse is not eligible for a social security number, the spouse can apply for an individual taxpayer identification number (ITIN) by filing a Form W-7 "Application for IRS Individual Taxpayer Identification Number" with the IRS.

For a taxpayer to qualify for the head of household filing status, is the age of

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Head of the House or Head of Household?

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the taxpayer's child important ?

Yes and no. If the taxpayer is single, the age of the taxpayer's child is not significant *unless* the child is married. If the child is married, he or she must qualify as the taxpayer's dependent by meeting the five dependency tests, in which age is a factor.

If the taxpayer is married and lived separate from his or her spouse for the last six months, the child must qualify as the taxpayer's dependent by meeting the five dependency tests, in which age is a factor.

How does having a child placed in the taxpayer's home for adoption affect the taxpayer's ability to qualify for the head of household filing status?

Before legal adoption, a child is considered the taxpayer's child if the child was placed with the taxpayer for adoption by an authorized placement agency. To qualify for the head of household filing status, a taxpayer must meet all of the requirements, including the requirement that "the taxpayer's home was the child's main home for more than half the year." (If the child was born during the last half of the year, the taxpayer's home must have been the child's main home for the portion of the year after the child was born.)

How does the State Board of Equalization (SBE) become involved with head of household cases?

When a taxpayer disagrees with the Franchise Tax Board's action on the taxpayer's protest against a proposed assessment or a denial of a claim for refund, the taxpayer may file an appeal with the State Board of Equalization.

Explain the difference between the SBE *Appeal of William Tierney* (97-SBE-006-A) and the new SBE opinion on the *Appeal of Barbara Godek (98-SBE-005)*.

Both SBE opinions address how to treat the time a taxpayer, taxpayer's spouse and taxpayer's claimed qualifying individual lived together to determine how long a taxpayer's home was the claimed qualifying individual's main home during the year. The *Tierney* opinion addresses taxpayers who were unmarried by the end of the tax year and the *Godek* opinion addresses taxpayers who were legally married at the end of the tax year.

Is the question in Section C of the Head of Household Audit Letter, "Did any other person live with you," an invasion of the taxpayer's privacy?

No. This question is asked on the audit letter to determine if there were any members of the household who could qualify the taxpayer for the head of household filing status. Some taxpayers completing the audit letter list a person that cannot qualify them for head of household. If the taxpayer provides information about another person, that person could possibly qualify the taxpayer for the head of household filing status.

Head of Household Presentations Available

Head of household presentations similar to the symposium held at the Franchise Tax Board's Central Office have been well received in other California cities as well.

Since December, FTB has conducted head of household presentations in Santa Barbara, Stockton, Watsonville, Lancaster and Escondido.

The presentations are geared towards helping practitioners better understand the head of household filing status. A typical presentation includes a head of household program overview, an explanation of the qualification criteria for using the head of household filing status and a discussion about important questions that practitioners should ask their clients who file head of household.

For information on how to get a head of household presentation conducted in your area, contact FTB's Head of Household Unit at (916) 845-6265.

Free Seminars For Businesses, Taxpayers

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Saturday, March 27, in Sacramento at American River College.
(916) 227-1883

Tuesday, March 30, in Ventura at
Ventura Community College.
(805) 677-2771

Wednesday, March 31, in Bakersfield at
Bakersfield College.
(805) 334-3929

Thursday, April 1, in Fresno at
California State University, Fresno.
(209) 248-4209

Saturday, May 1, in Hayward at California State University, Hayward.
(510) 637-2473

To attend a seminar, call the telephone number provided for the location of your choice. For-up-to-date information about these and other taxpayer education opportunities, visit the BOE Web site at www.boe.ca.gov and click on "Taxpayer Education."

For more information about FTB's participation in the seminars, contact Alvaro Hernandez, FTB Small Business Tax Education Coordinator, at (916) 845-5257.

Service on the Rise

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toll-free number is (800) 852-5711.

From outside the United States, the number is (916) 845-6500 (This number is not toll-free).

FTB Field Offices

Taxpayers can also visit FTB at one of the 16 field offices located throughout California. Office hours are Monday through Friday, 8 a.m. to 5 p.m. The field offices offer extended hours on Wednesdays until 7 p.m. and are open on Saturdays from 8:30 a.m. until 12:30 p.m. In addition, all field offices will be open Thursday, April 15 from 8 a.m. to 7 p.m.

The Tax Store

The Franchise Tax Board is participating with the Internal Revenue Service in a prototype tax store in the Great Mall of the Bay Area located in Milpitas.

Taxpayers can file their returns electronically from the store site or drop off completed paper tax returns. Taxpayers can also obtain tax forms and information and use available auto-dialers to contact FTB and IRS telephone centers. Tax forms and publications can be downloaded from the kiosks and printed for the taxpayer on-site.

FTB's hours of operations during the 1999 filing season will be Monday through Friday, 10 a.m. to 7 p.m.; Saturday, 10 a.m. to 4 p.m.; and Sunday, 11 a.m. to 4 p.m.

Tax News

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